THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.No.27746 of 1995

ORDER:

The petitioners herein, who are non-tribals, claim to be the owners and possessors of Ac.20.00 of land in Patta No.64, Gangavaram village, hamlet of Buttaigudem, Polavaram Mandal, situated in a scheduled area. It is not in dispute that Buttaigudem village was part of Gutala Zamin and that the estate was taken over by the Government on 4-2-1953 under the provisions of the A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act 1948.

It is claimed by the petitioners that the said land was initially acquired by one Bodapati Naradayya in the year 1915, who made it fit for cultivation and gifted to his daughter by name B. Venkamma under a registered gift deed dated 19.8.1930. The 1st petitioner, being the son-in-law of B. Venkamma, succeeded to the said property under a settlement deed dated 25.7.1955. The 2nd petitioner is the son of the 1st petitioner. Thus, it is claimed that the petitioners and their ancestors have been in possession and enjoyment of the property in question since 1915 onwards holding valid title.

While so, the 5th respondent herein, a tribal, made a complaint claiming that the land in question was acquired by him by *podu* cultivation and that the same was leased out to Venkamma long back. It was alleged that the 1st petitioner who is the son-in-law of Venkamma continued in possession and refused to release the land. On the basis of the said complaint, the Special Deputy Collector, Tribal Welfare, Eluru, initiated proceedings under Section 3 (2) (a) of the Andhra Pradesh Scheduled Areas Land transfer Regulation, 1959 (for short "Regulation 1 of 1959") as amended by Regulation 1 of 1970. After due enquiry, by order dated 17.12.1977, the Special

Deputy Collector (TW) held that the writ petitioners are in possession of the land in question in violation of the provisions of Regulation 1 of 1959 and, accordingly, ordered ejection. Against the said order, though the petitioners preferred an Appeal before the Agent to Government of Andhra Pradesh, the same was dismissed on 26.8.1981. Aggrieved by the same, the petitioners filed W.P.No.6708 of 1981. The said writ petition was disposed of by this Court by order dated 6.2.1987 granting liberty to the petitioners to work out the alternative remedy available under Regulation 1 of 1959. Pursuant thereto, the petitioners preferred a Revision before the Government of Andhra Pradesh. The said Revision Petition was dismissed vide G.O.Rt.No.868 dated 30.8.1995, holding that the order of ejection passed by the Special Deputy Collector dated 17.12.1977 as confirmed in appeal on 26.8.1981 does not warrant interference. The said order dated 30.8.1995 is under challenge in this writ petition.

I have heard the learned counsel for the petitioners and perused the material on record.

It is relevant to note that during the pendency of the eviction proceedings under Regulation 1 of 1959, enquiry under Section 9 of the Andhra Pradesh (Scheduled Areas Ryotwari Settlement) Regulation, 1970 (for short, Regulation 2 of 1970) was conducted by the Settlement Officer, Eluru, and that the claim of the petitioners for grant of ryotwari patta was rejected by order dated 28.2.1977. However, the appeal preferred by the petitioners was allowed and the Director of Settlements, Andhra Pradesh, Hyderabad, by order dated 17.9.1980, set aside the order of Settlement Officer dated 28.2.1977 and remanded the matter for fresh enquiry. Pursuant thereto, the petitioners appeared before the Settlement Officer and produced all the relevant material to substantiate their title. On the basis of the same, the Settlement Officer, Eluru, by order dated 17.4.1981 granted a ryotwari patta for the land in question in favour of the petitioners

holding that they have established their title over the said land. The said order dated 17.4.1981 has become final.

Having regard to the order passed under Regulation 2 of 1970 granting ryotwari patta in favour of the petitioners, the learned counsel for the petitioners vehemently contended that the orders of ejection passed by the respondents 1 to 3 are erroneous and liable to be set aside. The learned counsel contended that by virtue of Section 15 of Regulation 2 of 1970, the provisions of Regulation 2 of 1970 shall have an overriding effect notwithstanding anything inconsistent with any other law and, therefore, the ryotwari patta granted by the Settlement Officer, Eluru, by order dated 17.4.1981 ought not to have been ignored by the respondents 1 to 3 while exercising the jurisdiction under the provisions of Regulation 1 of 1959.

On the other hand, the learned Government Pleader for Social Welfare, appearing for the respondents submitted that the ryotwari patta, if any granted under Regulation 2 of 1970, does not preclude the competent authority under Regulation 1 of 1959 to make an enquiry as contemplated under Regulation 1 of 1959 and to order ejection in case it is found that the transfer of immovable property was *null and void* as provided under sub-section (1) of Section 3 of Regulation 1 of 1959.

It is true that Section 15 of Regulation 2 of 1970 which enables a ryot in a scheduled area to which this Regulation applies to obtain a ryotwari patta in respect of the land in his holding contains an overriding clause, which runs as under:

> "**15. Regulation to override other laws:** the provisions of this Regulation shall have effect notwithstanding anything inconsistent therewith in the Andhra Pradesh (Andhra Scheduled Areas) Estates (Abolition and Conversion into Ryotwari) Regulation, 1959, as amended by the Andhra Pradesh (Andhra Scheduled Areas) Estates (Abolition and Conversion into Ryotwari) (Amendment) Regulation, 1960, or any other law, custom usage or agreement for the time being in force, or any decree or order of a Court, tribunal or other authority".

However, it is relevant to note that Regulation 1 of 1959 is a special enactment, the main purpose of which is to invalidate transfer of lands situated in agency tracts in favour of non-tribals. As could be

seen from the scheme of Regulation 1 of 1959, it contains separate machinery for proper determination of the validity of a transfer of immovable property situated in the agency tracts by a person, whether or not such person is a member of a scheduled tribe. Clause (b) of Section 3 (1) provides for a presumption against a person, who is not a member of a scheduled tribe that he had acquired the immovable property in the agency tract through a transfer by a member of a scheduled tribe until the contrary is proved. Thus, the burden of establishing that he has not acquired the property in question through a transfer made by a member of a scheduled tribe is always on the person, who is not a member of a scheduled tribe, but in possession of immovable property situated in the agency tracts. It is also relevant to note that Section 3 (1) (a) of Regulation 1 of 1959 contains a *non-obstante* clause giving an overriding effect to the prohibition under Section 3 (1) (a) over any other enactment, rule or law in force in the agency tracts. On the other hand, Regulation 2 of 1970 though contained an overriding clause under Section 15, the second proviso to Section 7 (1) of Regulation 2 of 1970, which provides for entitlement of the ryots in the scheduled areas to ryotwari patta requires that possession of such ryot shall not be void or illegal under Regulation 1 of 1959 or any other law for the time being in force. The proviso to Section 9(1) of Regulation 2 of 1970 further reiterates that the claim for a ryotwari patta shall not be void under any other law applicable to the scheduled areas.

In the light of the above provisions contained in Regulation 2 of 1970, it is clear that no ryot who is not a member of the Scheduled Tribe shall be entitled to a ryotwari patta in case his possession or occupation is void or illegal under Regulation 1 of 1959 or any other law applicable to the scheduled areas.

Having considered the scheme of Regulation 1 of 1959, as amended by Regulation 1 of 1970, Vis-à-vis the provisions of Regulation 2 of 1970, particularly the *non-obstante* clauses provided in

both the Regulations, in **Gadde Nagabhushanamma v. Government**[1], this Court held that Regulation 2 of 1970 intends primacy to be accorded to the legislative philosophy underlying the various provisions of the amended 1959 Regulation.

Hence, the mere fact that the Settlement Officer had granted a ryotwari patta in favour of the petitioners by itself does not validate the possession of the petitioners and it is always open to the Special Deputy Collector to make an independent enquiry as contemplated under Regulation 1 of 1959 and to record a finding whether the transfer of immovable property in the given case was made in contravention of Section 3(1) of Regulation 1 of 1959.

However, the learned Counsel for the petitioner while placing reliance upon the decisions in **SADANAPALLI RAMACHANDRA AND OTHERS v. THE SPECIAL DEPUTY COLLECTOR, (TRIBAL WELFARE), PALWANCHA, DISTRICT KHAMMAM AND OTHERS**[2] and **J. SAMBA MURTHY v. AGENT TO THE GOVT**.[3] contended that the authority under Regulation 1 of 1959 is not competent to go into the validity of possession of a non-tribal, who is granted a ryotwari patta under Regulation 2 of 1970. It is contended that in the case on hand since a ryotwari patta was granted in favour of the petitioners on 17.4.1981 during the pendency of the appeal against the order of ejection, and the said fact was also brought to the notice of the Appellate Authority, there is absolutely no justifiable reason to hold that the possession of the petitioners was illegal.

Both the above decisions are clearly distinguishable on facts and are not applicable to the case on hand.

It is also relevant to note that in the case on hand by the date of the order of the Settlement Officer dated 17.4.1981 grating ryotwari patta, there was already a determination by the Special Deputy Collector (TW) under Regulation 1 of 1959 holding that the transfer in favour of the petitioners was void and illegal. The said finding

recorded by the Special Deputy Collector in the order of ejection dated 17.2.1977 is binding on the Settlement Officer while making the enquiry under Regulation 2 of 1970. Hence, I do not find any substance in the contention of the learned Counsel for the petitioners that having regard to the ryotwari patta granted under Regulation 2 of 1970 the impugned orders of ejection are illegal and unsustainable.

Coming to the merits of the case, the respondents 1 to 3, on the basis of the evidence produced, recorded concurrent findings of fact that the petitioners are in possession of the land in question on a transfer from the 5th respondent herein who is a hill-tribe and that the said transfer is void being hit by Section 4 (1) of the Agency Tracts Interest and Land Transfer Act, 1917. I do not find any justifiable reason to interfere with the said concurrent findings of fact, which are based on evidence on record apart from being in conformity with the settled principles of law.

Accordingly, the Writ Petition, which is devoid of any merit, is hereby dismissed. No costs.

G. ROHINI, J.

Dt.13–03-2007
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.No.27746 of 1995

DATED: 13-03-2007

Between:

1. Pindra Suryakantham and another. ... Petitioners.

And

1. The Govt. of A.P., represented by its Secretary, Social Welfare (F) Department, Secretariat, Hyderabad, A.P., and 4 others. ... Respondents.

[1] 1999(5) ALD 430;

[2] 1978 (2) APLJ 244

[3] 1983 (2) APLJ 96